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## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-204781

DATE: March 10, 1982

MATTER OF: Pacific Consolidated Services, Inc.

## DIGEST:

1. A bidder's failure to submit a required bid guarantee may be waived if the procuring agency receives only one eligible bid. Where the record demonstrates that, contrary to protester's allegation, at least one other eligible bid was received, the agency properly refused to waive the bid guarantee requirement.
2. A solicitation licensing requirement which merely requires bidder to represent that it has or can obtain a specific license prior to performance does not constitute a definitive criterion of responsibility since it does not require bidder to furnish any additional evidence concerning license prior to award.

Pacific Consolidated Services, Inc. protests the award of a contract to Diamond Detective Agency under invitation for bids (IFB) PBS-9PPB-81-0073 issued by the General Services Administration. The solicitation is for guard services at the Prince Jonah Kuhio Kalaniana'ole Federal Building in Honolulu, Hawaii. Pacific was the low bidder, but GSA found its bid to be nonresponsive for failure to submit a bid guarantee. GSA awarded the contract to Diamond on the basis of its second-low bid. Pacific contends that GSA should have waived the bid guarantee requirement and awarded it the contract. We disagree.

The IFB requires the submission of a bid guarantee in the amount of 20 percent of the annual bid price. Pacific contends that GSA should have waived the failure to provide a bid bond because, in its view, all the other bids submitted in response to the IFB were nonresponsive. For example, the protester asserts that the bid submitted by Diamond was nonresponsive because Diamond could not meet the licensing requirement set forth in the solicitation.

This Office has consistently held that where a bid guarantee is required as part of a bid, the failure to provide a guarantee renders the bid nonresponsive. 46 Comp. Gen. 11(1966); Zemark International Construction Co., B-203020, May 12, 1981, 81-1 CPD 372. That failure cannot be waived or excused unless one of the limited exceptions in section 1-10.103-4 of the Federal Procurement Regulations (FPR) (1964 ed. amend. 200) applies. One of the excepted situations is where only a single bid is received. FPR § 1-10.103-4(a). We have held that where more than one bid is submitted, the failure to submit a guarantee may be waived under this exception if all other bids are nonresponsive or otherwise ineligible for award. See Hudgins & Company, Inc., 56 Comp. Gen. 43 (1976), 76-2 CPD 368; Liberty Asphalt Corporation, B-196451, January 29, 1980, 80-1 CPD 81.

We find that Pacific's bid does not fall within the single bid exception because, contrary to Pacific's assertion, Diamond's bid was responsive and eligible for award. The IFB required a bidder to represent that it has or can obtain prior to the date set for performance a license to provide armed guard service in the state of Hawaii, and Diamond completed this representation. Such a licensing requirement, moreover, is not a matter of bid responsiveness, as Pacific asserts, but rather is a matter of bidder responsibility. 53 Comp. Gen. 51 (1973); Capitol Ambulance Service, Inc., B-200770, September 23, 1981, 81-2 CPD 244.

The contracting officer found Diamond to be responsible. Our Office will not review affirmative determinations of responsibility except where there is a showing of fraud or bad faith on the part of procuring officials or where the solicitation contains definitive responsibility criteria which have not been applied. Langfur Construction Corporation, B-204380, September 4, 1981, 81-2 CPD 201. Although Pacific disagrees with the contracting officer's affirmative responsibility determination, it does not allege fraud or bad faith. Additionally, definitive responsibility criteria involve specific and objective responsibility factors, compliance with which is a necessary prerequisite to award. National Ambulance and Escort Service, Inc., B-196511, November 8, 1979, 79-2 CPD 342. While a solicitation requirement for a specific license usually constitutes a definitive responsibility criterion, see, e.g., Sillco, Inc., B-188026, April 29, 1977, 77-1 CPD 296; Washington Patrol Service, Inc., B-195900, August 19, 1980, 80-2 CPD 132, the licensing requirement here can be met simply by completion of

the representation; there is no requirement that the bidder furnish any additional evidence to the contracting agency prior to award concerning the license. Therefore, we do not believe that the IFB established a definitive responsibility criterion, and we will not question Diamond's responsibility.

Because the GSA received a responsive bid which it could, and did, accept, the single bid exception contained in section 1-10.103-4(a) did not apply and Pacific was properly rejected as nonresponsive.

The protest is denied. .

*for Milton J. Arnold*  
Comptroller General  
of the United States